

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

UNITED STATES OF AMERICA

v.

Criminal No. 2:16-cr-00049

MARK ANTHONY LEVITT

MOTION TO SUPPRESS

Comes now the defendant, Mark Anthony Levitt, by his attorney, Assistant Federal Public Defender Ann Mason Rigby, undersigned, and respectfully moves this Honorable Court, pursuant to Federal Rule of Criminal Procedure 12, for an Order suppressing all fruits of a warrantless search of and seizure of evidence from Apartment 9 at a building in Nitro, West Virginia (“Apartment 9”), conducted by members of the Nitro Police Department and/or the Kanawha County Bureau of Investigation (“law enforcement”) on July 29, 2015. This would include but not necessarily be limited to statements made by Mr. Levitt during the illegal law enforcement search of Apartment 9, the black touch screen LG mobile phone law enforcement illegally seized from the back bedroom of Apartment 9 and data or other evidence recovered therefrom, and any statements Mr. Levitt made following the illegal search of and seizure from Apartment 9. In support of this motion, Mr. Levitt represents as follows on information and belief:

1. The Fourth Amendment provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” “It is well settled under the Fourth and Fourteenth Amendments that a search conducted without a

warrant issued upon probable cause is ‘per se unreasonable . . . subject only to a few specifically established and well-delineated exceptions.’ *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973).

2. On July 29, 2015, law enforcement entered Apartment 9, entered the back bedroom of that Apartment, and seized a black touch screen LG mobile phone.

3. Law enforcement had no warrant to search Apartment 9.

4. No one at Apartment 9 voluntarily consented to law enforcement entering Apartment 9, entering the back bedroom of Apartment 9, or seizing the mobile phone, and there was no other legal justification for these intrusions.

WHEREFORE, for the foregoing reasons and such others as may be advanced at a hearing on this motion or in briefing to follow that hearing, Mr. Levitt respectfully requests that this Honorable Court enter an Order suppressing any and all evidence that resulted from the July 29, 2015 events at Apartment 9.

Respectfully submitted this 1st day of June, 2016.

MARK ANTHONY LEVITT

By Counsel

**CHRISTIAN M. CAPECE
FEDERAL PUBLIC DEFENDER**

s/ Ann Mason Rigby
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **MOTION TO SUPPRESS** has been electronically filed with the Clerk of Court this date using the CM/ECF system and served upon opposing counsel as follows:

VIA CM/ECF: Lisa G. Johnston
Assistant United States Attorney
United States Courthouse, Room 4000
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Charleston, West Virginia 25301
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DATE: June 1, 2016

s/ Ann Mason Rigby
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